



**[BILLING CODE: 6750-01S]**

**FEDERAL TRADE COMMISSION**

**[File No. 122 3010]**

**Nissan North America, Inc. and TBWA Worldwide, Inc.; Analyses of Proposed Consent Orders to Aid Public Comment**

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed Consent Agreements.

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**SUMMARY:** The consent agreements in these matters settle alleged violations of federal law prohibiting unfair or deceptive acts or practices. The attached Analyses of Proposed Consent Orders to Aid Public Comment describe both the allegations in the draft complaints and the terms of the consent orders -- embodied in the consent agreements -- that would settle these allegations.

**DATES:** Comments must be received on or before February 24, 2014.

**ADDRESSES:** Interested parties may file comments at

<https://ftcpublic.commentworks.com/ftc/nissannorthamericaconsent> and

<https://ftcpublic.commentworks.com/ftc/tbwaconsent>

online or on paper, by following the instructions in the Request for Comments part of the

**SUPPLEMENTARY INFORMATION** section below. Write “Nissan North America Consent

Agreement, Inc. - Consent Agreement; File No. 122-3010” or “TBWA Worldwide, Inc. -

Consent Agreement; File No. 122-3010” on your comment and file your comments online at

<https://ftcpublic.commentworks.com/ftc/nissannorthamericaconsent> and

<https://ftcpublic.commentworks.com/ftc/tbwaconsenthttps://ftcpublic.commentworks.com/ftc/fid>

[elitynationalconsent](#)

by following the instructions on the web-based forms. If you prefer to file your comments on paper, mail or deliver your comments to the following address: Federal Trade Commission, Office of the Secretary, Room H-113 (Annex D), 600 Pennsylvania Avenue, NW, Washington, DC 20580.

**FOR FURTHER INFORMATION CONTACT:** Matthew D. Gold, FTC Western Region, (415-848-5100), 901 Market Street, Suite 570 San Francisco, CA 94103.

**SUPPLEMENTARY INFORMATION:** Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR § 2.34, notice is hereby given that the above-captioned consent agreements containing consent orders to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, have been placed on the public record for a period of thirty (30) days. The following Analyses to Aid Public Comment describe the terms of the consent agreements, and the allegations in the complaints. An electronic copy of the full text of the consent agreement packages can be obtained from the FTC Home Page (for January 23, 2014), on the World Wide Web, at <http://www.ftc.gov/os/actions.shtm>. Paper copies can be obtained from the FTC Public Reference Room, Room 130-H, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, either in person or by calling (202) 326-2222.

You can file comments online or on paper. For the Commission to consider your comments, we must receive them on or before February 24, 2014. Write “Nissan North America Consent Agreement, Inc. - Consent Agreement; File No. 122-3010” or “TBWA Worldwide, Inc. - Consent Agreement; File No. 122-3010” on your comment. Your comment - including your name and your state - will be placed on the public record of this proceeding, including, to the

extent practicable, on the public Commission Website, at <http://www.ftc.gov/os/publiccomments.shtml>. As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Website.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any "[t]rade secret or any commercial or financial information which . . . is privileged or confidential," as discussed in Section 6(f) of the FTC Act, 15 U.S.C. § 46(f), and FTC Rule 4.10(a)(2), 16 CFR § 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR § 4.9(c).<sup>1</sup> Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

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<sup>1</sup> In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR § 4.9(c).

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at <https://ftcpublic.commentworks.com/ftc/nissannorthamericaconsent> and <https://ftcpublic.commentworks.com/ftc/tbwaconsent> by following the instructions on the web-based forms. If this Notice appears at <http://www.regulations.gov/#!/home>, you also may file a comment through that website.

If you file your comment on paper, write ““Nissan North America Consent Agreement, Inc. - Consent Agreement; File No. 122-3010” or “TBWA Worldwide, Inc. - Consent Agreement; File No. 122-3010” on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H-113 (Annex D), 600 Pennsylvania Avenue, NW, Washington, DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Website at <http://www.ftc.gov> to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before February 24, 2014. You can find more information, including routine uses permitted by the Privacy Act, in the Commission’s privacy policy, at <http://www.ftc.gov/ftc/privacy.htm>.

## **Analysis of Proposed Consent Order to Aid Public Comment in the Matter of Nissan North America, Inc.**

The Federal Trade Commission (“FTC” or “Commission”) has accepted, subject to final approval, an agreement containing consent order from Nissan North America, Inc. (“respondent”).

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement and take appropriate action or make final the agreement’s proposed order.

This matter involves the advertising, marketing, and sale of the Nissan Frontier pickup truck by respondent. Respondent has marketed the Nissan Frontier to consumers through the “Hill Climb” advertisement, which respondent disseminated on television and over the internet. According to the FTC complaint, the Hill Climb advertisement deceptively demonstrated the capabilities of the Nissan Frontier.

Specifically, according to the FTC complaint, the Hill Climb advertisement depicts a Nissan Frontier pickup truck rescuing a dune buggy that is trapped in sand on a steep hill. The Nissan Frontier speeds up the sand dune and stops immediately behind the dune buggy. The Nissan Frontier then pushes the dune buggy up and over the top of the hill. Onlookers are portrayed observing the feat in amazement. A narrator subsequently states, “The mid-size Nissan Frontier with full-size horsepower and torque. Innovation for doers, innovation for all.” According to the complaint, the demonstration is portrayed in a realistic, “YouTube” style, as if shot with a mobile phone video camera.

According to the complaint, respondent represented that the Hill Climb advertisement accurately represents the performance of an actual, unaltered Nissan Frontier pickup truck under the depicted conditions. The complaint further alleges that this claim is false, and thus violates the FTC Act, because the Nissan Frontier pickup truck is incapable of performing the feat depicted in the Hill Climb advertisement. In truth, according to the complaint, both the Nissan Frontier pickup truck and the dune buggy were dragged to the top of the hill by cables, and the sand dune was made to appear to be significantly steeper than it actually was.

The proposed consent order contains provisions designed to prevent respondent from engaging in similar acts or practices in the future. Specifically, Part I prohibits respondent from misrepresenting, in the context of the advertisement as a whole, any material quality or feature of any Nissan-branded pickup truck through the depiction of a test, experiment, or demonstration. Part I specifies that nothing in the order shall be deemed to preclude the use of any production techniques that do not misrepresent a material quality or feature of the advertised truck.

Part II of the proposed order requires respondent to maintain, and make available to the Commission upon written request, copies of relevant advertisements, as well as any and all unedited video and still images taken during the production of any advertisement depicting a demonstration, experiment, or test. Under Part II, respondent must also maintain any and all affidavits or certifications submitted by an employee, agent, or representative to any television network or other individual, where such affidavit or certification affirms the accuracy or integrity of a demonstration contained in an advertisement.

Parts III, IV, and V of the proposed order require respondent to provide copies of the order to its personnel; to notify the Commission of changes in corporate structure that might affect compliance obligations under the order; and to file compliance reports with the

Commission. Part VI provides that the order will terminate after twenty (20) years, with certain exceptions.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the proposed order or to modify its terms in any way.

### **Analysis of Proposed Consent Order to Aid Public Comment in the Matter of TBWA Worldwide, Inc.**

The Federal Trade Commission (“FTC” or “Commission”) has accepted, subject to final approval, an agreement containing consent order from TBWA Worldwide, Inc. (“respondent”).

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement and take appropriate action or make final the agreement’s proposed order.

This matter involves the advertising and marketing of the Nissan Frontier pickup truck by respondent. Respondent is an advertising agency of Nissan North America, Inc., and prepared and disseminated the “Hill Climb” advertisement, which promoted the Nissan Frontier pickup truck. According to the FTC complaint, the Hill Climb advertisement, which appeared on television and over the internet, deceptively demonstrated the capabilities of the Nissan Frontier.

Specifically, according to the FTC complaint, the Hill Climb advertisement depicts a Nissan Frontier pickup truck rescuing a dune buggy that is trapped in sand on a steep hill. The Nissan Frontier speeds up the sand dune and stops immediately behind the dune buggy. The Nissan Frontier then pushes the dune buggy up and over the top of the hill. Onlookers are

portrayed observing the feat in amazement. A narrator subsequently states, “The mid-size Nissan Frontier with full-size horsepower and torque. Innovation for doers, innovation for all.” According to the complaint, the demonstration is portrayed in a realistic, “YouTube” style, as if shot with a mobile phone video camera.

According to the complaint, respondent represented that the Hill Climb advertisement accurately represents the performance of an actual, unaltered Nissan Frontier pickup truck under the depicted conditions. The complaint further alleges that this claim is false, and thus violates the FTC Act, because the Nissan Frontier pickup truck is incapable of performing the feat depicted in the Hill Climb advertisement. The complaint further alleges that respondent knew or should have known that the claim is false. In truth, according to the complaint, both the Nissan Frontier pickup truck and the dune buggy were dragged to the top of the hill by cables, and the sand dune was made to appear to be significantly steeper than it actually was.

The Hill Climb advertisement was created by TBWA Chiat/Day Los Angeles, a division of TBWA Worldwide, Inc. Because TBWA Chiat/Day Los Angeles is not a formal corporate entity, the Commission’s order names TBWA Worldwide, Inc., as respondent. Via the order’s definition of “respondent,” however, the injunctive provisions of the order apply only to TBWA Chiat/Day Los Angeles and to its sister agency, TBWA Chiat/Day New York.

The proposed consent order contains provisions designed to prevent respondent from engaging in similar acts or practices in the future. Specifically, Part I prohibits respondent from misrepresenting, in the context of the advertisement as a whole, any material quality or feature of any pickup truck through the depiction of a test, experiment, or demonstration. Part I specifies that nothing in the order shall be deemed to preclude the use of any production techniques that do not misrepresent a material quality or feature of the advertised truck. Consistent with prior



FTC cases involving advertising agencies, Part I also declares that respondent can be held liable for violating Part I of the order only if it knew or should have known that the test, experiment, or demonstration misrepresented a material quality or feature of the advertised truck.

Part II of the proposed order requires respondent to maintain, and make available to the Commission upon written request, copies of relevant advertisements, as well as any and all unedited video and still images taken during the production of any advertisement depicting a demonstration, experiment, or test. Under Part II, respondent must also maintain any and all affidavits or certifications submitted by an employee, agent, or representative to any television network or other individual, where such affidavit or certification affirms the accuracy or integrity of a demonstration contained in an advertisement.

Part III of the proposed order requires respondent to provide copies of the order to certain of its personnel. Parts IV and V of the proposed order require TBWA Worldwide, Inc., to notify the Commission of changes in corporate structure that might affect compliance obligations under the order; and to file compliance reports with the Commission. Part VI provides that the order will terminate after twenty (20) years, with certain exceptions.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the proposed order or to modify its terms in any way.

By direction of the Commission.

Donald S. Clark,  
Secretary.

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